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HINDU MARRIAGES AND JURISDICTION OF FOREIGN COURTS TO ENTERTAIN NULLITY PROCEEDINGS.

The interaction of English law and foreign systems of private International law have sometimes produced bizarre situations. The decision of the Probate Court in *Mehta* v. *Mehta*[1] has brought to light one such situation. In that case, Mehta, a Hindu, with an Indian domicile, in the course of his sojourn in England for purposes of study met in September, 1938, one Miss Kohn, a British woman, Christian by religion, domiciled in England and employed as a teacher in London. In the words of the learned Judge " apparently they became fond of one another, and there was some talk between them of marriage." They however apprehended objection from the parents of Mehta due to her being a Christian. In due course the respondent returned to India, and shortly afterwards the petitioner also came to India along with a mutual friend. She met the respondent and early in 1940 it was suggested that she should be converted to Hinduism to facilitate their marriage, to which she agreed. For five days before the conversion, she and the respondent stayed at a hotel in Bombay and on February 15, 1940, she was not merely converted to the Hindu faith but also married to the respondent according to the Arya Samaj rites. The present proceedings were brought in England for a declaration of the nullity of the marriage on the ground that when the ceremonies were being performed the petitioner was all along under the impression that she was only being converted and had no idea that she was also being married. One of the questions which the Probate Court had to consider was whether it had jurisdiction in the matter. Barnard, J., observed : " But the case does raise certain difficulties including the question of jurisdiction. I am not in the least troubled by the fact that the respondent was at all times domiciled in India. As the law now stands and as it really always has stood I think the fact that the petitioner was at all material times domiciled in England gives this Court jurisdiction to deal, so far as nullity is concerned, with the marriage she went through with the respondent". Barnard, J., has thus held that in nullity proceedings the original domicile of the petitioner is the test of jurisdiction, no matter where or according to what rites or in what faith the marriage may have been performed. He seems also to have assumed, as the decision would suggest, that the validity of the marriage need not be tested by the law applicable to the parties at the time of the solemnisation but according to ordinary contractual law. Two questions arise : first, what gives jurisdiction in nullity proceedings and second, what is the law to be applied in granting the relief.

As stated by Lord Westbury in *Shaw* v. *Gould*[2] : " Marriage is the very foundation of civil society, and no part of the laws and institutions of a country can be of more vital importance to its subjects than those which regulate the manner

1. (1945) 2 All.E.R. 690.
2. (1868) L.R. 3 H.L. 55, 83.

and conditions of forming, and, if necessary, of dissolving the marriage contract." The British Courts give various types of relief in regard to marriages, such as divorce, divorce a *mensa et thoro*, nullity, restitution of conjugal rights, jactitation, etc. Of these, however, divorce could be obtained till 1857 only by private Acts of Parliament and it was only thereafter that it became available through judicial processes for stated causes. Other matrimonial reliefs were however available from very early times. According to English law, divorce jurisdiction rests on domicile only. "The domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve the marriage"—*Le Mesurier* v. *Le Mesurier*[1]. Divorce granted by a Court other than the Court of domicile will not be valid, *Dolphin* v. *Robins*[2], *Harvey* v. *Farnie*[3], unless it is recognised by the law of the domicile, *Armitage* v. *Attorney-General*[4], or by statute. A statutory modification introduced by the Indian and Colonial Divorce Jurisdiction Act, 1926, permits persons domiciled in England to obtain divorces in India on the basis of their residence in India. As to the system of domestic law to be applied in such cases, various possibilities have been discussed and most of them have been rejected. It cannot be the *lex loci contractus* inasmuch as marriage is not a mere contract but a contract conferring status or status arising out of contract. It cannot be the *lex loci celebrationis*, since mode of celebration by itself cannot regulate future status. It cannot be the *lex loci delicti* since the place of matrimonial offence is often accidental merely. It cannot be the *lex patriae*, for though favoured by some systems of continental laws British jurisprudence has definitely rejected nationality as a basis of jurisdiction in matrimonial matters. Nor can it be the law of the place of residence, since residence may be characterised by impermanence. It is the *lex fori* that is held applicable. The rule is also absolute that a wife cannot in any circumstances, not even after the parties are judicially separated, acquire or retain a domicile of her own, *Cook* v. *Attorney-General for Aberta*[5], *H.* v. *H.*[6] It would therefore follow that divorce could be granted only on grounds available under the domestic law applicable to the husband, usually the husband's law of domicil. In England this principle has been subjected to two statutory exceptions. The Matrimonial Causes Act, 1937, provides one modification. Under that Act, in the case of desertion by the husband, if prior to that he was domiciled in England or Wales, the Court shall have jurisdiction for the purpose of any proceeding in divorce, annulment, judicial separation and restitution of conjugal rights whatever domicile he may have at the time of the actual proceedings. The other statutory modification is made by the Matrimonial Causes Act, 1944, which is a purely temporary measure. According to that Act, if a marriage had been celebrated on or after September 3, 1939, between a husband domiciled outside the United Kingdom at the time of the marriage and a wife who immediately prior to the marriage was domiciled in the United Kingdom, the High Court shall have divorce and nullity jurisdiction. So far as divorce is concerned it is thus clear that jurisdiction is founded on domicile except where there is relaxation of the rule by statute or by the law of the domicile, and the law applicable in granting the relief is the *lex fori*.

Does jurisdiction regarding nullity stand differently? It is submitted, not. It is true that while divorce was not available ordinarily prior to 1857, other matrimonial reliefs could be had. Ecclesiastical courts were granting such reliefs. Residence was the basis of jurisdiction in such matters. An appeal from such Courts lay originally to the Pope. Since the Reformation, these Courts became national Courts and the appeal lay to the King. The passing of the Matrimonial Causes Act, 1857 (20 and 21 Vic., c. 85) resulted in provision being made for divorce and in the transfer of matrimonial jurisdiction to the secular Courts. The practice and procedure of the Divorce Court are governed by statute and rules made thereunder and where they are silent the principles and practice of the ecclesiastical Courts must be followed in proceedings other than for dissolution. Jurisdiction in nullity suits is therefore exercised in accordance with the principles and rules

1. (1895) A.C. 517 (P.C.).
2. (1859) 7 H.L.C. 390.
3. (1882) 8 A.C. 43.
4. (1906) P. 135.
5. (1926) A.C. 444.
6. (1928) P. 206.

as nearly as may be conformable to the principles and rules on which the ecclesiastical Courts acted. To assume that the jurisdiction of the High Court in regard to nullity proceedings was altogether an inherited jurisdiction would not be quite correct. Nor is there anything in that Act to warrant the making of a complete distinction between divorce jurisdiction and jurisdiction in nullity proceedings. The Matrimonial Causes Acts of 1937 and 1944 treat them alike. It is therefore reasonable to argue that the earlier Act of 1857 could not have intended differently. Proceedings in nullity, though technically different, are in substance akin to divorce proceedings, for, both involve a question of status. There is *prima facie* no reason to employ in the case of nullity proceedings a different test as to jurisdiction. Eminent jurists have recognised that residence alone will not be sufficient to confer jurisdiction in nullity cases, *see* Cheshire's Private International Law[1]; Read's Recognition and Enforcement of Foreign Judgments[2]. That the test is the same, namely, domicile in regard to nullity proceedings also has been judicially recognised, *Salvesen* v. *Administrator of Austrian Property*[3], *Inverclyde* v. *Inverclyde*[4]. But recent decisions both in England and Scotland have propounded a different doctrine and have recognised residence as sufficient to confer jurisdiction, see *White* v. *White*[5], *Easterbrook* v. *Easterbrook*[6], *Hutter* v. *Hutter*[7], *Lendrum* v. *Chakravarti*[8], *Macdougal* v. *Chitnavis*[9], *Mangrulkar* v. *Mangrulkar*[10]. In *Salvesen's case*[11], Lord Phillimore had observed : " In my opinion the Wiesbaden Court was the only competent Court for the parties." The observation has been sought to be explained away in one of two ways. In Rayden on Divorce[12], it is suggested that the observation only means that " the Court of the domicile has a superior claim in questions of status to other Courts and is therefore the only Court competent to pronounce a decree which is conclusive everywhere and not that the jurisdiction of the Court of the domicile is exclusive of all other Courts". In *Mason* v. *Mason*[13], it seems to have been considered that Lord Phillimore's observation was probably due to the fact that in the *Salvesen case*[11] neither party had a residence outside their domicile to give jurisdiction for nullity proceedings. It may, with all respect to the propounders of these lines of distinction, be stated that the observation of Lord Phillimore is too emphatic to be distinguished on the lines suggested. A more important argument in favour of residence being the test of jurisdiction in nullity proceedings is that " where an Englishman by will leaves property to the child of a foreigner, Re *Paine*[14] or where one accused of bigamy pleads that his first marriage is void, *R.* v. *Naguib*[15] or where the wife sues for judicial separation or for restitution of conjugal rights and the husband pleads that the marriage is void, *Chetti* v. *Chetti*[16], *Nachimson* v. *Nachimson*[17] or where the wife sues for maintenance in a Summary Court and the husband contends that the marriage is not valid, *Papadopoulos* v. *Papadopoulos*[18], in all such cases the Courts in England have considered themselves competent to determine the validity of the marriage even when the parties had been domiciled abroad and the marriage had been celebrated abroad and hence it would be inconsistent to deny such jurisdiction when the issue is raised fairly and squarely in nullity proceedings". It is true that British Courts have for many years been deciding as incidental matters questions relating to the validity of marriages. That, however, is only as ancillary to some other question of which the Court was directly seised and to whose solution such a decision was necessary. That would not however mean that where the issue is directly raised whether a marriage is valid or not a Court which will not normally have jurisdiction in the matter could assume jurisdiction. Also it may be noted that in Halsbury's Laws of England (2nd edition, Vol. X, p. 640),

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1. 2nd edition, pp. 337-339.
2. Pp. 232-252.
3. (1927) A.C. 641.
4. (1931) P. 29.
5. (1937) P. 111.
6. (1944) P. 10.
7. (1944) P. 95.
8. (1929) Sc.L.T. 96.
9. (1937) Sc.C. 390.
10. (1939) Sc.C. 239.
11. (1927) A.C. 641.
12. 4th edition, p. 15.
13. (1944) N.I. 134.
14. (1940) Ch. 16.
15. (1917) 1 K.B. 359.
16. (1907) P. 67.
17. (1930) P. 217.
18. (1930) P. 55.

it is stated that the Courts entertain a nullity suit *if the respondent was within the jurisdiction at the institution of the suit*, whatsoever the ground of the suit and wheresoever the marriage was celebrated.

In the *Mehta case*[1], Barnard J., speaks of the petitioner having a British domicile which gave him jurisdiction in the matter. It is not clear whether what Barnard, J., meant was that the petitioner had the requisite residence which according to the later decisions of the British Courts would give jurisdiction in nullity matters. If, however, the learned Judge was applying the same test as is applied in divorce cases to determine jurisdiction, it is difficult to perceive how the petitioner could be deemed to have a British domicile at the material time. The petitioner no doubt had such a domicile prior to her marriage. She had left England avowedly with the object of marrying the respondent. And a marriage was in fact gone through at Bombay. That, in law, meant that she had *prima facie* acquired British Indian domicile, the domicile of her husband. How then could she have at the same time a British domicile? Till the marriage is actually set aside it is to be presumed to be valid, and the Courts will have to start with the presumption that the domicile of the petitioner is that of her husband. Obviously the assumption of jurisdiction could not be correlated to the eventual result of the suit. Jurisdiction cannot rest on so doubtful a foundation. It is therefore difficult to follow the learned Judge's conclusion on this matter. Again the policy of the Indian Law in regard to the matter may be gathered from section 2 of the Divorce Act (IV of 1869) according to which solemnisation of marriage in India and residence are requisite for conferring jurisdiction.

Even assuming that by reason of her residence at all material times in England, the Probate Court would have jurisdiction to entertain the nullity proceedings notwithstanding that the respondent was not at that time within its jurisdiction the question still remains by what law the nullity or otherwise of the marriage would fall to be determined. The marriage was according to the Hindu rites and in India. The validity has therefore to be tested by the principles of that law only. The latter system no doubt recognises cases where in spite of an apparent marriage the status of wifehood does not arise, as for instance where a person marries a girl who is within the prohibited degrees of relationship or is a sagotra or has identity of pravara. The Mitakshara[2] has stated :

सपिण्डासु समानगोत्रासु समानप्रवरासु भार्यत्वमेव नोत्पद्यते ।

In a case where both parties had originally an Indian domicile and as Hindus had married in India according to the Hindu rites, it can hardly be contended that mere residence of one of the spouses in England at the material time would give jurisdiction to the English Courts in regard to nullity proceedings or that the validity of the marriage will fall to be determined by any system of law other than Hindu law. How then can the fact that at an earlier point of time one of the spouses had a British domicile affect the position in regard to either matter? The analogy afforded by section 2 of the Indian Divorce Act suggests that the British Court will not have jurisdiction if the marriage has not been celebrated within Britain. The rule in Halsbury would deny jurisdiction if the respondent was not at the time of the institution of the proceedings resident in Britain.

In the *Mehta case*[1], the willingness of the parties to marry each other, the petitioner's journey to India shortly after the respondent's return to this country, the petitioner's willingness to be converted to Hinduism to overcome the parental antipathy to the marriage, their staying together for five days in Bombay prior to the conversion, all these circumstances show that the petitioner had not come to India as a tourist or for any other purpose than to marry the respondent. And a marriage was in fact gone through according to the learned Judge's finding. It is the law of this country that a marriage actually celebrated will be presumed to

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1. (1945) 2 All.E.R. 690.

2. *Cf.* Baudhayana II, 1-1-37.

be valid and in accordance with law till the contrary is established, *Indiran* v. *Ramaswami*[1], *Ramamani* v. *Kulandai Nachiar*[2], *Fakirgouda* v. *Gangi*[3], *Appi Bai* v. *Khimji*[4]. Even a duly performed marriage could be set aside no doubt if there is force or fraud, *Venkatacharyulu* v. *Rangacharyulu*[5], *Mulchand* v. *Bhudhia*[6]. In the *Mehta case* there was no use of force at any stage; nor was any fraud alleged. What was set up was a unilateral mistake as to the nature of the ceremony that she went through. It was not suggested that the respondent was aware of her mistake and kept quiet or that he had misled her. In the circumstances the mistake as to the nature of the ceremony performed would hardly be material, particularly in view of the fact that she had agreed to marry the respondent and for that purpose was ready to adopt Hinduism. Barnard, J., observes: "I have also heard the evidence of Sir Alfred Wort, who was for some fourteen years a Judge of the High Court in British India, and I am quite satisfied, from his evidence, that the ceremony which the petitioner went through with the respondent was a valid marriage according to the law of British India." On this finding it is submitted that the prayer should have been rejected. The learned Judge however went on to remark: "I am equally satisfied, from the evidence that the petitioner never had any intention to contract a valid marriage *at the time*." (Italics ours.) The importance of the last expression is rather difficult to realise. If intention to marry was present and had been expressed before, the fact that the idea of marriage was not associated by her with the ceremony in which she was participating, at that time, can have no force in the absence of any suggestion of fraud or other ulterior purpose. So even on principles of contractual law the conclusion of the learned Judge would not seem to be justified. The case however serves to emphasise that the English law in regard to the award of matrimonial relief is not either in accordance with the policy expressed in the Indian Divorce Act or with the principles of private International law. In all such matters there should be reciprocity and uniformity in the principles to be applied by the tribunals of the different countries if anomalous results are to be avoided.

S. VENKATARAMAN.

SUMMARY OF ENGLISH CASES.

JOHN LANCASTER RADIATORS, LTD. *v.* GENERAL MOTOR RADIATOR CO., LTD, (1946) 2 All.E.R. 685 (C.A.).

Practice—Pleading—Denial of allegations in plaint—Specific denial of each item—If essential.

It is not necessary for the pleader to copy out each allegation in the statement of claim which he denies. A pleading in defence which alleges in effect, that the statement of claim and every allegation of fact in it is incorrect from beginning to end, cannot be said to be obscure or evasive. To compel the defendants to set out the denials in a longer form would merely lead to unnecessary expense. The plaintiffs may serve a notice to admit facts or make use of interrogatories.

If at the hearing of the action the Court thinks that the statement of defence in that form has involved the plaintiffs in unnecessary expense, the Court can deal with the matter by way of costs. There is no defect in the form of the defence warranting a striking out of the defence.

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1. (1869) 13 Moo.I.A. 141, 158.
2. (1871) 14 Moo.I.A. 345, 366.
3. (1898) I.L.R. 22 Bom. 277, 299.
4. (1938) I.L.R. 60 Bom. 455.
5. (1891) 1 M.L.J. 85: I.L.R. 14 Mad. 316.
6. (1898) I.L.R. 22 Bom. 812.

SOPHAN *v.* CLIFFORD AND SON, (1946) 2 All.E.R. 733 (C.A.).

Bankruptcy—Petition based on judgment debt as act of bankruptcy—Order for payment by instalments of the judgment debt—If can be made without notice to creditor so as to interfere with the creditor's right to proceed with the bankruptcy petition.

Where a creditor has presented a petition in bankruptcy based on a judgment debt as an act of bankruptcy, the judgment debt ought not without notice to the petitioning creditor to be ordered to be paid in instalments so as to interfere with the creditor's right to proceed with the bankruptcy petition.

Quaere.—Whether the Court which passed the judgment had jurisdiction after commencement of bankruptcy proceedings to make an order for payment by instalments?

IN THE ESTATE OF OATES, CALLOW *v.* SUTTON, (1946) 2 All.E.R. 735 (P.D.A.).

Will—Alterations in—Presumption and onus—Intention of testator—Evidence as to—Admissibility to rebut presumption.

Alterations apparent on the face of a will are to be presumed to have been made after the will was executed, until evidence to the contrary is adduced. The declarations of the testator made before the execution of the will are admissible evidence from which a jury might draw the inference as to the alterations having been made before the execution of the will, since the alterations were made in furtherance of an intention shown to have existed before the execution of the will.

J. (otherwise S.) *v.* J., (1946) 2 All.E.R. 760 (P.D.A.).

Husband and wife—Husband sterilised surgically before marriage to knowledge of wife—Wife if entitled to decree of nullity on the ground of wilful refusal to consummate marriage.

The act of a husband in having an operation performed which made him completely sterile, although able to achieve penetration and emission (the wife being thus artificially prevented from having a child by him) amounts to wilful refusal to consummate the marriage. However, where the wife knew before her marriage that the husband had been made irremediably sterile, she must be held to have acquiesced in the circumstances of the marriage and a decree of nullity cannot be granted in her favour on the ground that by reason of the operation the husband is unable to consummate the marriage.

MERSEY DOCKS AND HARBOUR BOARD *v.* COGGINS AND GRIFFITH LTD., (1947) A.C. 1 (H.L.).

Tort—Master and servant—Negligence of servant causing injury to stranger—Liability—Servant, a driver of a crane which was hired out to another along with driver—Master liable—Hirer or permanent employer—Test.

A mobile crane was hired out along with its driver to stevedores for the purpose of loading a ship. As a result of the negligence of the driver in working the crane a third party was injured and claimed damages. On the evidence it was found that the accident happened because of the negligent way in which the crane driver worked his crane and that the stevedores had no control over how he worked the crane as distinguished from telling him what he was to do with the crane. In the circumstances,

Held: The general employers and not the hirers must be liable for the negligence. The burden of proof rests on the general employer to shift the *prima facie* responsibility for the negligence of servants engaged and paid by such employer so that this burden in a particular case may come to rest on the hirer who for the time being has the advantage of the service rendered.

COLMAN *v.* ISAAC CROFT AND SONS, (1947) 1 K.B. 95.

Tort—Master and servant—Negligence of servant (a lorry driver) causing death to person employed for doing other work volunteering to go in the lorry and help in loading and unloading—Doctrine of common employment—Not applicable.

Where a person employed as bricklayer travelled in a lorry belonging to his employer volunteering his assistance in loading and unloading and was injured and killed as a result of an accident due to the negligence of the driver of the lorry and the former's wife sued for damages,

Held: The doctrine of common employment is not applicable. To-day the Court leans against the doctrine of common employment and it is possible to take the view that the deceased man volunteered to help with the loading and unloading of the lorry, and undertook the risks of the negligence of the lorry driver when both were engaged in doing this but he did not volunteer to undertake the risks of the negligence of the lorry driver while driving him from one place to another at which loading or unloading was to be done.

COUTTS AND CO. *v.* BROWN LECKY, (1947) 1 K.B. 104.

Guarantor—Infant's loan with bank—Guarantor if can be made liable.

The guarantors to a bank of an infant's loan, where all the parties know the facts, cannot be sued ; because the loan guaranteed is absolutely void.

GRAHAM *v.* GLASGOW CORPORATION, (1947) 1 All.E.R. 1 (H.L.).

Tort—Master and servant—Injury to employee—Liability—Defence of common employment—Sustainability—Electric trams—Collision—Injury to servant—Master if liable.

A tramcar belonging to the respondents collided, owing to the negligence of the driver employed by them (by failing to apply the brakes) with another of their tramcars on which the appellant was employed by them as a conductress, with the result that the appellant sustained injuries. The appellant sought reparation from the respondents.

Held: The crews of the two tramcars were carrying out a common work. From the circumstances that tramcars cannot avoid an impending collision by lateral movement and that a common path is prescribed by them by the rails on which they both travel necessarily creates a great risk, the employee's contract must be regarded as including the implied term exonerating the respondent from liability for the negligence of the appellant's fellow-servant.

Radcliff v. *Ribble Motors Services, Ltd.*, (1939) 1 All.E.R. 637 : (1939) A.C. 215 (H.L.) explained and distinguished.

DOUDIE *v.* KINNEIL CO. LTD., (1947) 1 All.E.R. 6 (H.L.).

Workmen's Compensation Act (1925), *Section* 9 (1), *proviso* (*c*)—*Accident resulting in total incapacity—Claim for maximum compensation for total incapacity—Compensation for partial incapacity in respect of earlier accident—If to be included in the maximum.*

A workman who is in receipt of compensation under the Workmen's Compensation Act for partial incapacity resulting from a first accident should continue to receive this compensation in addition to further weekly compensation in respect of the total incapacity resulting from a second accident. The proviso to Section 9 (1) of the Workmen's Compensation Act which provides that " the weekly payments shall in no case exceed 30-s " will not apply to the case. The proviso only limits the compensation in respect of the injury caused by the particular accident and not the total compensation payable to an individual. The

words " In no case " mean " in the case of no given accident" and not " in the case of no individual."

(1935) 2 K.B. 90 approved.

SEARLEE *v.* WALLBANK, (1947) 1 All.E.R. 12 (H.L.).

Tort—Horse escaping through gap in fence and colliding with cyclist on highway—Owner of field if liable for failure to maintain fences to prevent escape of animals on highway.

The respondent's horse got on to the road from his field as the fence was defective and as a result of its collision with the appellant, a cyclist he was injured. In an action for damages,

Held : The road side owner who sets up no fence would not be under any duty to passersby on the roads as regards horses and cattle. Nor will such owner, who with a view to keeping out trespassers, or in an endeavour to prevent his cattle and horses from straying, be liable for failure to maintain such fences to prevent the escape of his horses or cattle.

COUCHMAN *v.* HILL, (1947) 1 All.E.R. 103 (C.A.).

Sale of goods—Auction—Catalogue describing " heifers " as " unserved "—Clause in catalogue excluding liability of auctioneers from liability for errors in description—Effect—Affirmation by auctioneer in reply to oral inquiry by bidder that heifer was unserved—Warranty—Liability for breach.

The plaintiff purchased at an auction a heifer which was described as " unserved " in the printed catalogue which also stated *inter alia* that the auctioneers will not be responsible for the correct description and were not giving any warranty whatever. The plaintiff however enquired of the auctioneer if he would confirm that the heifer was unserved and the auctioneer verbally confirmed the same. The heifer had a miscarriage shortly after and died as a result and of the strain of carrying a calf at too young an age for breeding. The plaintiff claimed damages for breach of warranty,

Held : In so far as the plaintiff relied on the statement in the catalogue to support his claim for damages for breach of warranty he necessarily failed. But there was an unqualified condition (on the oral assurance) which on its breach the plaintiff was entitled to treat as a warranty and receive damages. The printed condition that the vendor will take no responsibility for errors of description of things offered for sale on inspection is reasonable for visible defects, but for qualities or attributes which are invisible it is not reasonable.

LOEWENTHAL *v.* VANHOUTE AND ANOTHER, (1947) 1 All.E.R. 116 (K.B.D.).

Lease—Notice to quit—New tenancy if can be implied by issue of subsequent notice to quit.

A tenancy was determined on September 21, 1946, the notice to quit having been given on September, 14. The rent offered on 23rd September, was refused. A solicitor then gave a notice to recover possession.

Held : When a valid notice has been given, a new tenancy can be created only by an express or implied agreement. A subsequent notice to quit is of no effect unless other circumstances form the basis for inferring a new tenancy having been created after the expiry of the first notice. In this case no such agreement for next tenancy can be inferred.